tion of express preemption provisions of federal laws, nor the court's application of those principles to the circumstances of this case, presents any issue warranting this Court's review. The petition for a writ of certiorari should be denied.

A. The Court Of Appeals' Analysis Of The California Regulations At Issue Here Does Not Warrant Further Review

1. Petitioners contend (Pet. 17-18) that Cal. Code Regs. tit. 20, § 1606, which requires appliance manufacturers to provide the CERDC with data concerning their products' energy consumption, is preempted by 42 U.S.C. 6297(a)(1). Under Section 6297(a)(1), a state regulation is preempted "insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption or water use of any covered product if," *inter alia*, "such State regulation requires disclosure of information with respect to the energy use, energy efficiency, or water use of any covered product other than information required under section 6294 of this title." 42 U.S.C. 6297(a)(1), 6297(a)(1)(B). The court of appeals correctly rejected petitioners' preemption challenge to Cal. Code Regs. tit. 20, § 1606, holding that the relevant state requirements do not mandate the "disclosure of information" within the meaning of Section 6297(a)(1). Pet. App. 12a. Although the phrase "disclosure of information" might in *some* contexts encompass the submission of data to a state regulatory agency, abundant evidence in the text, structure, and history of the specific federal enactments at issue here indicates that the phrase has a more limited meaning in Section 6297(a)(1).

a. Section 6297(a) itself is entitled "Preemption of testing and labeling requirements." 42 U.S.C. 6297(a). "[T]he title of a statute or section can aid in resolving an ambiguity in the legislation's text," *INS* v. *National Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 189 (1991), and the reference to

"labeling requirements" in Section 6297(a)'s title suggests that the term "disclosure" in the same Section is limited to the provision of information to potential purchasers at the point of sale. That inference is reinforced by the fact that the statute preempts state requirements for the "disclosure" of information "other than information required under section 6294." 42 U.S.C. 6297(a)(1)(B). Section 6294 of Title 42 is entitled "Labeling" and directs the FTC to promulgate rules governing the information that must be placed on appliance labels. Section 6294, moreover, uses the words "discloses" and "disclosure" in describing the required contents of product labels under the FTC's rules. See 42 U.S.C. 6294(c)(1) and (4).

By contrast, the EPCA provisions that mandate the submission of information to the FTC or DOE do not use the word "disclosure" or any variant thereof. See Pet. App. 7a-8a. Rather, those provisions direct manufacturers under specified circumstances to "notify the Secretary or the Commission" of models in production to which the agencies' rules apply, 42 U.S.C. 6296(b)(1); to "provide" certain data upon request, 42 U.S.C. 6296(b)(2); and to "submit information or reports to the Secretary," 42 U.S.C. 6296(d). Because Section 6297(a)(1)(B) cross-references Section 6294, and because the terms "disclose" and "disclosure" are used in Section 6294 but not in Section 6296, Section 6297(a)(1)'s reference to state regulations governing "disclosure of information" is most naturally read as limited to state laws that are of the same character as Section 6294—*i.e.*, state labeling directives. See Pet. App. 7a; compare *Commissioner* v. *Lundy*, 516 U.S. 235, 250 (1996) ("The interrelationship and close proximity of these provisions of the statute presents a classic case for application of the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.") (citations and internal quotation marks omitted).

b. Although the EPCA reflects Congress's determination that energy conservation is a matter of national concern, the statute also contemplates that States will play an important role in this area. See 42 U.S.C. 6321(a)(1) and (2) (congressional findings). In particular, States are encouraged to develop energy-conservation plans, see 42 U.S.C. 6322, which may include "programs to promote energy efficiency in residential housing" through such measures as "the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing," 42 U.S.C. 6322(d)(8), 6322(d)(8)(B). States and localities are specifically authorized to adopt building codes that "permit[] a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective." 42 U.S.C. 6297(f)(3)(A); see H.R. Rep. No. 11, 100th Cong., 1st Sess. 39 (1987) (explaining that Section 6297(f) "allows States flexibility to implement performance-based building code approaches" that "authorize builders to adjust or trade off the efficiencies of the various building components so long as an energy goal is met"). As a practical matter, effective implementation of such building-code provisions would be substantially impeded if States could not direct appliance manufacturers to submit energy-efficiency data beyond the information required by Section 6294 and the FTC's rules to be included on a product's label.[3] Sec-

[3] Respondents' brief in the court of appeals explained that, under California's building code,

> builders can get "extra credit" for installing equipment of more-than-minimum specifications (e.g., a highly efficient air conditioner), and then "trade off" the extra credit by using more energy in another part of the building (e.g., reducing the amount of insulation in the ceiling or increasing the number or size of windows) in a way that reduces costs or makes the building more attractive to buyers. If states were unable to require manufacturers to submit relevant data,

tion 6297(a)(1) should not be construed in such a manner that it hinders state efforts to implement energy-conservation programs that are affirmatively encouraged by other provisions of the EPCA.

c. The court of appeals' construction of the EPCA term "disclosure" is also consistent with the longstanding position of the FTC. In comments submitted during an FTC rulemaking conducted in 1989, the State of New York urged the FTC to require manufacturers of covered lamp-ballast products to submit energy usage data to the Commission. 54 Fed. Reg. 28,032. As one reason for that request, the State expressed concern that the FTC's failure to require submission of those data could preclude the State from mandating comparable submissions. The State explained that 42 U.S.C. 6297(a)(1)(B) might be construed to "preempt state regulations that require the reporting of information concerning the energy use or efficiency of covered products other than information required to be reported pursuant to § 305.8 of the Commission's Appliance Labeling Rule [16 C.F.R. 305.8]." 54 Fed. Reg. at 28,032.

In response, the FTC expressed the view that

> the most logical and reasonable reading of [42 U.S.C. 6297(a)(1)(B)] is that it does not preempt the states from requiring ballast manufacturers to report energy usage and efficiency information. This section of EPCA applies to the preemption of state testing and labeling requirements. Consequently, when this section states that it preempts state disclosure regulations that differ from the Rule's disclosure requirements, it is referring to testing

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> it would be very difficult to make the calculations necessary to implement the trade-offs.

Resp. C.A. Br. 30-31 (citations omitted).

> and disclosures on a covered product label, not to information-reporting requirements.

Id. at 28,033. As the court of appeals explained, the reading of 42 U.S.C. 6297(a)(1)(B) espoused in the 1989 preamble is also consistent with the text of the FTC's current EPCA regulations, which "use 'disclosure' to refer to consumer-directed labeling and 'submission' to refer to data-submittal to a government entity." Pet. App. 8a n.5.[4]

d. The history of 42 U.S.C. 6297(a)(1) confirms that the provision in its current form does not restrict the States' authority to require manufacturers of covered appliances to submit energy-related data to state regulatory bodies. As originaliy enacted in 1975, Section 6297(a)(1) provided that any state regulation requiring "the disclosure of information with respect to any measure of energy consumption of any covered product" was preempted "*if there is a rule under section 6294 of this title* [*i.e.*, an FTC labeling rule] applicable to such covered product and such State regulation requires disclosure of information other than information disclosed in

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[4] The preemption theory hypothesized by the State of New York in its comments during the 1989 FTC rulemaking was significantly narrower than petitioners' own theory. New York expressed concern that States might be preempted from requiring lamp-ballast manufacturers to report energy-efficiency data beyond the information that manufacturers were required to submit to the FTC pursuant to 42 U.S.C. 6296 and 16 C.F.R. 305.8. See 54 Fed. Reg. at 28,032. Under petitioners' reading of the statute, by contrast, States could not require the submission of energy-efficiency information beyond what is required to be included on the product *label* under 42 U.S.C. 6294 and 16 C.F.R. 305.11. During the 1989 rulemaking, the FTC stated that, because the Commission was amending 16 C.F.R. 305.8 to require ballast manufacturers to submit data to the FTC, the preemption issue raised by New York was "largely moot." 54 Fed. Reg. at 28,033. If petitioners' preemption theory were correct, however, the requirement that such data be provided to the FTC would not eliminate the barrier to a comparable state data-submission requirement.

accordance with such rule under section 6294 of this title." 42 U.S.C. 6297(a)(1), 6297(a)(1)(B) (1976) (emphasis added). The italicized language strongly indicates that the preemptive effect of Section 6297(a)(1) in its original form was limited to state labeling requirements, since there would have been no apparent reason for Congress to make the preemption of state *data-submission* laws contingent on the FTC's promulgation of a *labeling* rule for a particular covered product.

In 1987, the NAECA amended 42 U.S.C. 6297(a)(1) in a manner that raises the question, discussed at pp. 12-14, *infra*, whether that provision in its current form makes the preemption of state law requiring "disclosure" of specified information contingent on the existence of a federal labeling requirement. See 42 U.S.C. 6297(a)(1) (1988). That amendment may affect the preemption analysis when a State seeks to establish *labeling* requirements for a covered product as to which there is no federal regulation imposing labeling requirements. See pp. 12-14, *infra*. But whatever the correct answer to *that* question, neither the text nor the history of the NAECA suggests that Congress intended to alter the meaning of the preexisting statutory term "disclosure," or to expand the preemptive scope of Section 6297(a)(1) to encompass state data-submission as well as labeling requirements. To the contrary, the Senate Report accompanying the NAECA stated that the amended version of Section 6297(a)(1) "essentially restates existing law, and provides that the Act supersedes State and local regulations regarding testing and *labeling* in certain cases." S. Rep. No. 6, 100th Cong., 1st Sess. 9 (1987) (emphasis added).

2. Petitioners contend (Pet. 17-19) that 42 U.S.C. 6297(a)(1) preempts Cal. Code Regs. tit. 20, § 1607(b) and (c), "which require appliances to be labeled with the manufacturer's name, brand name, or trademark; the appliance's model number; and [the appliance's] date of manufacture."

Pet. App. 13a; see *id.* at 13a nn. 7 & 8. That argument lacks merit. The preemptive scope of Section 6297(a)(1) is limited to state regulations that "provide[] * * * for the disclosure of *information with respect to any measure of energy consumption or water use of any covered product.*" 42 U.S.C. 6297(a)(1) (emphasis added). The italicized language does not encompass the routine product information required by Cal. Code Regs. tit. 20, § 1607(b) and (c), which has no inherent connection to a measure of "energy consumption" or "water use"—terms that are themselves defined by the EPCA, as the court of appeals explained. See Pet. App. 14a-15a & n.9.

Petitioners' preemption argument is based on the fact that the markings required by Cal. Code Regs. tit. 20, § 1607(b) and (c) are used in part to facilitate the implementation of energy-conservation programs adopted by the State of California. See Pet. 18. The language of 42 U.S.C. 6297(a)(1), however, does not support petitioners' view that the preemption analysis turns on the nature or purposes of the underlying state regulatory scheme. In Section 6297(a)(1), the phrase "with respect to any measure of energy consumption or water use of any covered product" does not modify "State regulation." Rather, the phrase modifies "information." The wording of Section 6297(a)(1) thus indicates that its preemptive effect depends upon the nature of the information required to be disclosed, not on the purposes for which disclosure is required. Standing alone, a product marking that identifies the manufacturer, model number, and date of manufacture of a covered appliance communicates nothing about the amount of energy or water that will be consumed in the product's operation. The data mandated by Cal. Code Regs. tit. 20, § 1607(b) and (c) therefore do not constitute "information with respect to any measure of energy consumption or water use."

3. The final state regulatory provision at issue here requires that energy-performance information be marked on

certain industrial and commercial appliances for which no federal labeling requirements exist. See Cal. Code Regs. tit. 20, § 1607(d)(2); Pet. App. 17a. The court of appeals held that those state regulatory provisions are not preempted because, there being no federal labeling requirement in effect for those products, the California regulatory scheme "does not require the disclosure of information that is 'other than information required' under federal law." *Id.* at 16a. Petitioners challenge that holding, contending (Pet. 19) that because the federal labeling regulations do not yet require any information concerning those appliances to be disclosed, the state requirement necessarily mandates a "disclosure of information" that is "other than information required" by the EPCA. See Pet. App. 22a (Noonan, J., dissenting) ("Where there are no federal regulations on the subject because the DOE has not promulgated any regulations, then any state regulations are 'other than' those federally required."). Moreover, Congress's deletion in 1987 of statutory language that had unambiguously limited Section 6297(a)(1)'s preemptive effect to situations in which a federal labeling rule existed (see pp. 10-11, *supra*) might suggest that no such limitation was intended.

There is some force to those points. On the other hand, Section 6297(a)(1)(B)'s reference to information "other than information required under" federal law might be read as making the existence of an applicable federal regulation under which disclosure of information in labeling *is* required a precondition for preemption to be triggered for the particular product, and as manifesting Congress's intent that state law will be preempted only when such regulations exist. In any event, this aspect of the Ninth Circuit's decision does not warrant further review. Petitioners identify no other judicial decision that has construed 42 U.S.C. 6297(a)(1), let alone a decision that has applied Section 6297(a)(1) to appliances for which no federal labeling rule exists. And because petitioners

identify no other State that has adopted regulations comparable to Cal. Code Regs. tit. 20, § 1607(d)(2), the court of appeals' ruling does not oblige petitioners to comply with inconsistent marking requirements in different parts of the country. There is consequently no sound reason to regard the narrow question presented here as an issue of substantial legal or practical importance.

Until the EPCA's amendment by the NAECA in 1987, the preemptive effect of Section 6297(a)(1) was unambiguously limited to covered products for which a federal labeling rule existed. See pp. 10-11, 13, *supra*. Whatever the impact of the 1987 amendment on the ultimate preemption question, there is no suggestion in the legislative history that the amendment responded to significant practical concerns. To the contrary, the 1987 Senate Report blandly described the amended version of Section 6297(a)(1) as "essentially restat[ing] existing law." S. Rep. No. 6, *supra*, at 9; see p. 11, *supra*. Even assuming, *arguendo*, that the actual effect (whether intended or unintended) of the NAECA amendments was to expand Section 6297(a)(1)'s preemptive scope to encompass appliances for which no federal labeling rule has been promulgated, the background of that modification reinforces the conclusion that the application of Cal. Code Regs. tit. 20, § 1607(d)(2) does not present a question of such substantial importance as to merit the Court's review.

B. The Court Of Appeals' Decision Is Consistent With *Engine Manufacturers Association* v. *South Coast Air Quality Management District*, 541 U.S. 246 (2004)

Contrary to petitioners' contention (Pet. 11-14), the court of appeals' ruling in this case does not conflict with this Court's recent decision in *Engine Manufacturers Ass'n* v. *South Coast Air Quality Management District*, 541 U.S. 246 (2004) (*EMA*). The federal statute that was given preemptive

effect in *EMA*, and the state-law requirements that were found to be preempted, are wholly distinct from the federal and state laws at issue here. Far from being "indistinguishable" (Pet. 13), the two cases have little in common beyond the facts that both arose in the Ninth Circuit and that both involved the construction of express preemption provisions.

Petitioners contend (Pet. 11, 13) that the manner in which the court of appeals applied a presumption against preemption reflected an "interpretive methodology" that this Court in *EMA* rejected. This Court in *EMA*, however, did not either invoke or reject a presumption against preemption or embrace any particular articulation of such a presumption; it simply held that, in light of the clarity of the relevant statutory text, the determination whether such a presumption applied would "demonstrably make[] no difference to resolution of the principal question" in the case. 541 U.S. at 256. Nor was the court of appeals' methodology in this case inconsistent with *EMA* in other respects. To the contrary, the court below carefully analyzed the relevant EPCA language, noting, inter alia, that the phrase "disclosure of information" should be given the same meaning in different parts of the statute. Pet. App. 7a-8a. The Ninth Circuit's reliance on that interpretive principle was fully consistent with *EMA*, in which this Court observed that the meaning of the term "standard" in the preemption provision of the Clean Air Act (CAA) was elucidated by "Congress's use of the term in another portion of the CAA." 541 U.S. at 254.

C. The Court Of Appeals' Application Of A Presumption Against Preemption Of State Law Raises No Issue That Independently Warrants This Court's Review

Petitioners urge this Court to grant review to clarify the circumstances under which courts should apply a presumption

against preemption of state law. See Pet. 14-21. That claim is misconceived.

1. As petitioners recognize, this Court's decisions make clear that a presumption against preemption (i) applies in "a field which the States have traditionally occupied," Pet. 14 (quoting *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001)), and (ii) does not apply "when the State regulates in an area where there has been a history of significant federal presence," Pet. 15 (quoting *United States* v. *Locke*, 529 U.S. 89, 108 (2000)). Thus, despite petitioners' extravagant assertion (Reply Br. 3 n.1) that the question presented here "potentially governs the preemptive effect of every federal statute," the ultimate thrust of petitioners' argument is much more modest. Petitioners' core contention is that review is warranted to consider the applicability of a presumption against preemption when Congress legislates in a field that has not traditionally been regulated *either* by the federal government *or* by the States.

In the first place, it is not clear that abstract differences in the formulation or application of a presumption against preemption would justify plenary review in the absence of a concrete split in authority on the preemptive force of a particular statute. This Court has generally made its statements about a presumption for or against preemption—much as it has made statements about other principles of statutory construction—in the context of cases that independently merited the Court's review. When the lower courts have disagreed about the preemptive force of a particular federal statute, that disagreement may provide a basis for clarifying the relevant presumption in a concrete context in which courts have come to differing conclusions. But any difference between the formulation of the presumption in one setting and its articulation in a discrete statutory context does not merit the Court's review.

2. Even assuming, *arguendo*, that the EPCA operates in a field that has traditionally been free from both state and federal regulation (compare Pet. 15 with Br. in Opp. 7), the question of what presumption applies in that context does not merit this Court's review. A number of the Court's decisions have treated a tradition of state regulation in the relevant field as a factor warranting a presumption against preemption. See, *e.g.*, *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996). The Court has not held, however, that the absence of such a tradition would necessarily render such a presumption inappropriate.

Since issuing its decision in *Medtronic*, this Court has identified two related settings in which there is no presumption against preemption. The first consists of areas, such as the regulation of national and international maritime commerce, "where there has been a history of significant federal presence." *Locke*, 529 U.S. at 108. The second involves state attempts to police the "relationship between a federal agency and the entity it regulates." *Buckman*, 531 U.S. at 347 (finding state-law claim for fraud on the Food and Drug Administration to be preempted). The instant case does not involve either of those situations.

This Court's refusal to apply a presumption against preemption when States regulate matters that are "inherently federal in character" (*Buckman*, 531 U.S. at 347) does not necessarily suggest that there is no such presumption in fields lacking any tradition of state *or* federal regulation. Most significantly, petitioners identify *no* case in which the Court has declined to apply a presumption against preemption solely on the ground that the relevant sphere of conduct had not traditionally been regulated by the States. Absent any decision by this Court actually adopting the rule that petitioners advocate, there is no basis for petitioners' contention that the

court of appeals' reliance on a presumption against preemption conflicts with the Court's precedents.

3. Petitioners' claim of a circuit conflict is mistaken for essentially the same reason. The court of appeals decisions on which petitioners rely fall into two basic categories. Some of those decisions hold, in accordance with this Court's decision in *Locke*, that a presumption against preemption does not apply in an area where there has been a history of significant federal presence.[5] Because petitioners do not contend that the instant case implicates a longstanding tradition of federal regulation, those decisions are inapposite.

Other decisions cited by petitioners simply apply a presumption against preemption in areas traditionally regulated by the States.[6] Contrary to petitioners' suggestions (Pet. 16;

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[5] See *UPS, Inc.* v. *Flores-Galarza*, 318 F.3d 323, 336 (1st Cir. 2003) ("No presumption against preemption is appropriate in this case because of Congress's significant—and undisputed—presence in the field of air transportation."); *Wachovia Bank, N.A.* v. *Burke*, 414 F.3d 305, 314 (2d Cir. 2005) (declining to apply a presumption against preemption in case involving federally chartered banks on the ground that regulation of such banks has historically been the province of the federal government), petition for cert. pending, No. 05-431 (filed Sept. 30, 2005); *Forest Park II* v. *Hadley*, 336 F.3d 724, 728-730, 732 (8th Cir. 2003) (detailing the decades-long history of federal affordable-housing loans and declining to apply a presumption against preemption to a state law that purportedly "regulate[d] or restrict[ed] the actions of the federal government under its own federal program" with respect to such a loan).

[6] See *Cliff* v. *Payco General Am. Credits, Inc.*, 363 F.3d 1113, 1125 (11th Cir. 2004) (applying a presumption against preemption to a state law involving consumer protection, "a field traditionally regulated by the states"); *Massachusetts* v. *United States Dep't of Transp.*, 93 F.3d 890, 894 (D.C. Cir. 1996) (applying a presumption against preemption to a state law regulating "how waste may be picked up or dropped off in a state," which "must be thought an area of traditional state control"); *Bronco Wine Co.* v. *Jolly*, 95 P.3d 422, 429 (Cal. 2004) ("After extensively reviewing the history of state regulation of beverage and wine labels prior to Congress's adoption of the FAA Act in 1935—a history that reveals substantial state involvement and

Reply Br. 4), the appellate courts' consistent recognition that a tradition of state regulation *supports* application of a presumption against preemption does not logically imply that such a tradition is a *necessary* condition for applying such a presumption.[7] Because petitioners identify no case in which a court of appeals has declined to apply a presumption against preemption based solely on the absence of a longstanding state regulatory presence in the relevant field, petitioners' claim of a circuit conflict is unfounded.

Moreover, as explained above (see pp. 6-14, *supra*), the court of appeals' decision concerning the preemptive scope of Section 6297(a)(1) does not warrant review. This case therefore would not in any event be an appropriate vehicle for considering any variation in the formulation or application of a presumption against preemption in different settings.

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very little federal regulation—we conclude that a presumption against preemption does indeed apply in this case."), cert. denied, 544 U.S. 922 (2005).

[7] In *UPS*, the First Circuit stated in dictum that a presumption against preemption "only arises * * * if Congress legislates in a field traditionally occupied by the states." 318 F.3d at 336. The First Circuit further explained, however, that "[n]o presumption against preemption is appropriate in this case because of Congress's significant—and undisputed— presence in the field of air transportation." *Ibid.* That rationale is fully consistent with the court of appeals' decision in the instant case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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In the
Supreme Court of the United States

AIR CONDITIONING & REFRIGERATION INSTITUTE *et al.*,
Petitioners,

v.

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR ALLIANCE OF AUTOMOBILE MANUFACTURERS, AMERICAN PETROLEUM INSTITUTE, ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, ENGINE MANUFACTURERS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR CERTIORARI

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QUESTION PRESENTED

The Energy Policy and Conservation Act of 1975, as amended, sets energy and water-use efficiency standards for appliances, and expressly preempts "any State regulation [that] provides at any time for the disclosure of information with respect to any measure of energy consumption or water use" that differ from federal requirements. 42 U.S.C. §§ 6297, 6316. Applying an unprecedented form of the presumption against preemption, the Ninth Circuit held in this case that California regulations requiring detailed energy-information disclosures by manufacturers to state regulators are not preempted because such disclosures are not "directed to consumers at point of sale or use."

The question presented is whether the Ninth Circuit correctly applied the presumption against preemption in letting stand California's strategic attempt to nullify Congress's express preemption of state-disclosure requirements.

TABLE OF CONTENTS

Page

QUESTION PRESENTED ii

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION 3

REASONS FOR GRANTING THE WRIT 5

A. The Decision Below Conflicts With This Court's Prior Decisions. 5

B. There Is Confusion Among The Courts Of Appeals Over When The Presumption Against Preemption Should Apply. 9

C. The Question Presented Is A Recurring One Of Exceptional Public Importance. 11

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases

BankWest, Inc. v. Baker,
411 F.3d 1289 (11th Cir. 2005) 10

Bates v. Dow Agrosciences LLC,
125 S. Ct. 1788 (2005) 8

Buckman Co. v. Plaintiffs Legal Committee,
531 U.S. 341 (2001) 8, 16

Cippolone v. Liggett Group, Inc.,
505 U.S. 505 (1992) 8

CSX Transp., Inc. v. Easterwood,
507 U.S. 658 (1993) 6, 7

Donovan v. Dewey,
452 U.S. 594 (1981) 13

Engine Mfrs. Ass'n v.
South Coast Air Quality Mgmt. Dist.,
541 U.S. 246 (2004) 5, 7, 14

English v. General Elec. Co.,
496 U.S. 72 (1990) 12

Flagg v. Yonkers Sav. & Loan Ass'n,
396 F.3d 178 (2d Cir. 2005) 9

Forest Park II v. Hadley,
336 F.3d 724 (8th Cir. 2003) 9

Frank Bros., Inc. v. Wisconsin Dep't of Transp.,
409 F.3d 880 (7th Cir. 2005) 10

Free v. Bland,
369 U.S. 663 (1962) 7

Gadda v. Ashcroft,
377 F.3d 934 (9th Cir. 2004) 11

Gade v. Nat'l Solid Wastes Mgmt. Ass'n,
505 U.S. 88 (1992) 7

Gibbons v. Ogden,
22 U.S. (9 Wheat) 1 (1824) 7

Lorillard Tobacco Co. v. Reilly,
533 U.S. 525 (2001) 14

Lynbrook Farms v. Smithkline Beecham Corp.,
79 F.3d 620 (7th Cir. 1996) 10

Metropolitan Ins. Co. v. Pettit,
164 F.3d 857 (4th Cir. 1998) 10

Natural Res. Def. Council, Inc. v. Harrington,
768 F.2d 1355 (D.C. Cir. 1985) 8

Norfolk S. Ry. Co. v. Shanklin,
529 U.S. 344 (2000) 14

Public Util. Dist. No. 1 of Grays Harbor Cty. Wash. v. IDACORP, Inc.,
379 F.3d 641 (9th Cir. 2004) 11

Rodriguez v. United States,
480 U.S. 522 (1987) 16

Saul v. United States,
928 F.2d 829 (9th Cir. 1991) 10

Sprietsma v. Mercury Marine,
537 U.S. 51 (2002) 6

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446 U.S. 740 (1980) 14

Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co.,
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INTEREST OF *AMICI CURIAE*[1]

Amici and their members represent an array of industries that manufacture and market products for sale in the global marketplace. Because *amici* and their members are regulated under the Energy Policy and Conservation Act of 1975 ("EPCA"), Pub. L. No. 94-163 (1975), they have a direct interest in the issues raised here concerning the proper scope and effect of the EPCA's express preemption provisions. They also have a general interest in the interpretation and application of federal statutes establishing uniform regulation and in determining the proper relationship of those statutes to state laws and regulations applied to the same matters. *Amici* believe that California's burdensome disclosure requirements are squarely inconsistent with the federal scheme established by Congress providing for uniform, national regulation of energy-consuming products sold nationwide. They also believe that the Ninth Circuit's decision misapplies the presumption against preemption, is not faithful to the plain language of the EPCA's express preemption provisions, and is directly in conflict with this Court's settled precedents.

ALLIANCE OF AUTOMOBILE MANUFACTURERS. The Alliance of Automobile Manufacturers, Inc. is a non-profit trade association comprised of nine car and light truck manufacturers. The Alliance has no parent company, subsidiaries, or affiliates that have issued shares to the public.

AMERICAN PETROLEUM INSTITUTE. The American Petroleum Institution is a non-profit national trade association for the U.S. oil and natural gas industry. API's

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[1] Both petitioners and respondents have consented to the filing of this brief in letters that are on file in the Clerk's office. Pursuant to S. Ct. R. 37.6, *amici* state that no counsel for a party authored any part of this brief, and no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

more than 400 member companies are engaged in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining, distribution and marketing. API has no parent company, subsidiaries, or affiliates that have issued shares to the public.

ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS. The Association of International Automobile Manufacturers is a non-profit trade association representing international manufacturers and distributors of motor vehicles. AIAM has no parent company, subsidiaries, or affiliates that have issued shares to the public.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA. The Chamber of Commerce is the world's largest business federation, representing an underlying membership of more than three million businesses, state and local chambers of commerce, and professional organizations. Chamber members operate in every sector of the economy and transact business throughout the United States. The Chamber has participated as *amicus curiae* in several hundred cases before this Court, including numerous cases addressing the subject of federal preemption.

ENGINE MANUFACTURERS ASSOCIATION. The Engine Manufacturers Association is a not-for-profit trade association that represents the leading manufacturers of internal combustion engines used in most medium-duty and heavy-duty vehicles, as well as in marine vessels, locomotives, and lawn, garden and utility equipment. EMA has no corporate parents, subsidiaries, or affiliates, and no publicly traded company has a ten percent or greater ownership interest in EMA.

NATIONAL ASSOCIATION OF MANUFACTURERS. The National Association of Manufacturers is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 States. NAM's mission is to enhance the competitiveness of

manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media, and the general public about the vital role of manufacturing to America's economic future and living standards. NAM has no parent company, subsidiaries, or affiliates that have issued shares to the public.

INTRODUCTION

Congress has enacted comprehensive federal legislation governing energy efficiency standards for appliances and industrial equipment. In so doing, the Article I branch has expressed its specific intent to displace state law. The Energy Policy and Conservation Act, as amended, contains express preemption provisions that preempt "*any* State regulation [that] ... provides *at any time* for the disclosure of information with respect to *any* measure of energy consumption or water use" that differ from federal requirements. 42 U.S.C. § 6297(a)(1) (emphasis added); *see id.* § 6316. The preemption provisions are broadly framed, for Congress recognized that a successful national energy efficiency policy required that it "protect the appliance industry from having to comply with a patchwork of numerous conflicting State requirements," H.R. Rep. No. 100-11, at 24, and "bring a degree of regulatory ... certainty to the business planning of the appliance industry." *Id.* at 28.

California nonetheless seeks to nullify Congress's express preemption provisions and impose its own set of energy efficiency disclosure requirements on American businesses. Specifically, California has promulgated regulations that ban federally covered appliances from sale in the State unless manufacturers disclose extensive, detailed energy-efficiency information to California regulators. *See* Cal. Code Regs. Tit. 20 §§ 1606-1608 (2005). Likewise, the regulations mandate the inclusion of labels and other markings on appliances sold in California not required under

federal law. *See id.* § 1607. In briefing below, California emphasized its view that state-mandated disclosures, beyond those required by federal law, are "essential to the goal of saving energy." Appellants' Opening Br. 8-9. And it noted that the information collected by California regulators is "used daily by ... government agencies, consumers, building officials, energy researchers, utility program managers, manufacturers, and even other major appliance databases." *Id.*

As Judge Noonan explained in his dissent below, California's regulations are precisely the type of state regulations that Congress intended to prohibit under the EPCA's express preemption provisions. *See* Pet. App. 21a. The Ninth Circuit panel majority, however, reached the opposite result. Emphasizing California's view that its regulations serve "laudable" goals, the court employed an unprecedented "presumption against preemption" as justification for rewriting the plain text that Congress crafted. In particular, the panel majority narrowly construed the EPCA's preemptive scope, holding that the words "disclosure of information" refer only to "consumer-directed labeling at point of sale or use." Pet. App. 12a. And it imposed other strained narrowing constructions in order to save California's regulatory scheme.

For reasons set forth below, the Ninth Circuit manifestly erred in letting stand California's strategic regulatory attempt to nullify the EPCA's command that the States may not interfere with the uniform federal regulatory scheme governing energy efficiency disclosures. This Court should not tolerate this affront to federal law.